IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
S.B. Civil Writ Petition No.15/02
Budhi Prakash & Ors. Vs. State of Raj. & Ors.

Date of Order :: 23rd July, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri R.K. Goyal, Advocate for petitioners.
Shri Harshavardhan Nandwana, Dy. Government Advocate

REPORTABLE

This is a writ petition in which the petitioners have assailed the validity of order dated 16.6.1995 passed by the Collector, Ajmer and the order dated 2.4.1997 passed by Revenue Appellate Authority and also the order dated 22.11.2001 passed by the Board of Revenue.

The case set up by the petitioners is that Hari Kishan, father of the

petitioner nos.1 and 2 and Baldev, father of petitioner no.5 and petitioner nos. 3 and 4 were allotted a land comprising khasra no.10 and 14 on 25.4.1965. Such allotment was made under the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes), Rules, 1970 (for short - `the Rules of 1970'). One Nahar Singh made a complaint to the District Vigilance Committee, Ajmer sometime in the year 1979 that the petitioners got allotment of the aforesaid land made in their favour by mentioning wrong parentage and in fact one of the allottees' namely, Baldev, father of petitioner no.5, had already died much before the allotment was made. As per the decision of the District Vigilance Committee dated 28.4.79, the Sub-

Divisional Officer, Kekri filed an application purported to be one under Rule 14(4) of the Rules of 1970 before the Collector Ajmer for cancellation of the allotment. Collector mechanically cancelled such allotment by his order dated 24.6.83 without making any enquiry as to how the allotment made to the petitioners was not in accordance with Rules and based its order solely on the ex-parte inspection report submitted by Sub-Divisional Officer. When the petitioners filed appeal before the Revenue Appellate Authority, Ajmer, the said authority remanded the matter to the Collector for making a further enquiry whether the allotment was secured by the petitioners by exercising fraud or concealing the material facts. The

Collector, Ajmer vide order dated 16.6.95 finally cancelled the allotment on the basis of the ex-parte report of the Sub-Divisional Officer and did not make any enquiry as envisaged under Rule 14(4) of the Rules of 1970. It is this order of Collector which was upheld by Revenue Appellate Authority and the Board of Revenue and this is how the petitioners are now before this Court in this writ petition.

I have heard Shri R.K. Goyal, the learned counsel for the petitioners and Shri Harshvardhan Nandwana, the learned Deputy Government Advocate for the State.

Shri R.K. Goyal, the learned counsel for the petitioners argued that the allotment made in the year 1965 could not be cancelled after 30 years on technical

grounds. There was no allegation that the petitioners did not fulfill the condition of allotment. When the allotment was not made under the Rules of 1970, its cancellation could not be done by invoking such Rules. In fact, the allotment was made under the Rules of 1957 which stood repealed by Rule 21 of the Rules of 1970. According to Shri R.K. Goyal, Rule 14 of the Rules of 1970 provides that such allotment would be on a gair-khatedari tenancy basis which would ultimately lead to conferment of khatedari rights after the expiry of ten years under Rule 18 and when the petitioners completed ten years, the allotment became absolute. They having acquired khatedari rights, allotment could not be cancelled thereafter. Shri R.K. Goyal argued that

no tenant can be ejected from his holding except in accordance with the provisions of Rajasthan Tenancy Act. Cancellation of the allotment in the facts of the case clearly amounted to ejectment of the petitioners' from the land because the tenant as per Section 14 of the Rajasthan Tenancy Act also includes gair khatedar tenant. He argued that no enquiry was hold nor any finding was given that how and in what manner mentioning of wrong parentage dis-entitled the petitioners to allotment under the Rules of 1957. Finding recorded that one of the allottees' Baldev died issue-less was also not correct. He was survived by his son Malla, who is one of the petitioners. When the allotment was made in the year 1985, on that date Baldev was eligible

and very much alive, therefore, it cannot be said that such allotment was made against the Rules or was obtained by fraud or misrepresentation. No enquiry was held by the Collector to arrive at such a decision. He, therefore, prayed that this writ petition be allowed in terms of the prayer contained therein.

On the other hand, Shri Harshvardhan Nandwana, the learned Deputy Government Advocate opposed the writ petition and argued that the petitioners secured allotment under the Rules of 1957 by mentioning wrong parentage. In fact the allotment of the land was made to one of the allottees' Baldev much after his death. This irregularity came to surface when a complaint was received by District Vigilance Committee and consequently the

SDO, Kekri filed an application under Rule 14(4) of the Rules for cancellation. He has denied that no opportunity of hearing was given to the petitioners by Collector, Ajmer. After the application for cancellation was submitted by the SDO, show-cause notices were issued to the petitioners and they were duly represented by their Counsel Shri Mahendra Lal and Shri Basant Vijayvargiya, who filed their Vakalatnama and reply on their behalf respectively on 10.9.81 and 18.2.1982. When however, the Collector finally decided the matter on 24.6.1983, no one was present on behalf of the petitioners but that does not mean that service of the notices were not affected on them and they were not provided opportunity of hearing. He

argued that while Bhanwar Lal had shown the name of his father as Jagannath, but in fact his father’s name is Shyoji. Similarly, Hari Kishan has also shown wrong name of his father as Sri Kishan whereas his father’s actual name is Jagannath Mali. In fact, the enquiry report revealed that there was no persons by that name in Village Lasadia of Tehsil, Kekri. SDO, Kekri conducted enquiry in this connection and recorded the statements of various persons. In his enquiry report, the SDO found that father of Hari Kishan already had 108.14 bighas of land in his name in the year 1965, out of which 27 bighas and 17 biswas was was irrigated land and remaining land was un-irrigated. In this manner, a total of 18 bighas was in the share of Shrikishan, he

being one of his six sons. It was therefore contended that Hari Kishan was not a landless person for the purpose of allotment. According to inspection report, the name of father of Surja was Badri, but instead of indicating his father's name as Badri, he had shown the name of his father as Prabhu in the application form. On enquiry, it was revealed that his father actually had 79 bighas and 16 biswas of land out of which 21 bighas and 39 biswas and 8 biswas of land came to his notional share. He also cannot be treated as landless person. According to the report, therefore, it was found that the petitioners by concealing their true parentage secured allotment of land. They sought to explain this away by stating that the

application form for allotment was got filled through some other person and he mentioned the wrong parentage. The report also submitted that the allotment made in favour of Baldev S/o Gopal Lal was secured after Baldev had died. The Collector on the basis of the consideration of the aforesaid report and other material cancelled the allotment made in favour of the petitioners. This order was further upheld by the Revenue Appellate Authority, Ajmer by its judgment dated 2.4.1997. The Board of Revenue upon considering all the arguments in great details, which are now been raised before this Court, upheld the orders passed by the Collector and the Revenue Appellate Authority.

I have given my earnest consideration

to the aforesaid arguments and perused the material on record.

So far as the argument advanced by learned counsel for the petitioners that the allotment made in the Rules of 1957 could not have been cancelled in the Rules of 1970 is concerned, such an argument cannot be accepted because Rule 14(4) under which the allotment of the petitioners was cancelled categorically provides that the Collector shall have the power to cancel any allotment made by the Sub-Divisional Officer or a Tehsildar under the Rules repealed by Rule 21 of the Rules either suo moto or on the application of any person, in case the allotment has been secured through fraud or misrepresentation or has been made against rules or in case the allottee has

committed breach of any of the conditions of allotment. In the present case what has been found on enquiry is that the petitioners concealed their correct parentage with a view to presenting themselves as landless. In fact, one of the allottees' namely Baldev, father of petitioner no.5 was said to be not even alive on the date such allotment was made. I cannot uphold the argument of learned counsel for the petitioner that giving a wrong parentage would not have made any difference to the validity of the allotment since it has not been shown as to how this vitiates the allotment. This argument overlooks Rule 2(iii) of the Rules 1957 which defines the "landless person" to mean "a bonafide agriculture by profession who cultivate

or can reasonably be accepted to cultivate the land person, who does not hold any land or either in his own name or in the name of any member of the joint family or who holds an area which is less than the minimum prescribed for the purpose of Section 53 of the Tenancy Act". The learned counsel sought to distinguish this rule by arguing that although the petitioners / allottees can be part of the joint family of their father but their father cannot be treated as member of their joint family. I am however not inclined to uphold this line of reasoning either because mandate of the rule is that if an applicant applies for allotment of the land claiming himself to be a landless person, he "should not hold any land either on his

own name or in the name of any member of his joint family.” What is therefore intended is the joint family with both the applicant and his father and in case either of the two holds the land in his name, which is more than the minimum area prescribed for the purpose of Section 53 of the Tenancy Act, both of them would not liable to be treated as landless persons. Language of the Rule is therefore clear that this will include all members of such joint family regardless of the fact whether father applies for allotment under the said rules or the son applies. Regarding argument of death of the one of the allottees’ Baldev prior to his allotment by producing the photo-stat copy of the death certificate dated 1.1.02 which is

said to have been issued by Sarpanch of Gram Panchayat Lasadia, Panchayat Samiti, Kekri, which was sought to be produced by learned counsel for the petitioner during the course of arguments, such certificate cannot be entertained by this Court for the first time, particularly when the same was not produced before any of the Courts below and was not even made a part of record in the present proceedings.

In view of the aforesaid discussion, I do not find any merit in this petition. The writ petition is dismissed with no order as to costs.

RS/- (Mohammad Rafiq),J.